

SEP 11 2014

SECRETARY, BOARD OF  
OIL, GAS & MININGBEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY, LLC, A WHOLLY OWNED SUBSIDIARY OF LINN ENERGY, LLC, AS SUCCESSOR IN INTEREST TO BERRY PETROLEUM COMPANY, FOR AN ORDER FORCE-POOLING THE INTERESTS OF ALL OWNERS REFUSING OR FAILING TO BEAR THEIR PROPORTIONATE SHARE OF THE COSTS OF DRILLING AND OPERATING THE WELLS LOCATED IN THE DRILLING AND SPACING UNITS IN THE E½ OF SECTION 5 AND ALL OF SECTION 7 IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**INTERIM FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER****Docket No. 2014-012****Cause No. 272-04**

This matter came before the Utah Board of Oil, Gas, and Mining (the “Board”) on Wednesday, May 28, 2014, at approximately 4:30 p.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present and participated in the hearing: Ruland J. Gill, Jr., Chairman, Kelly L. Payne, Carl F. Kendell, Chris Hansen, Susan S. Davis, and Gordon L. Moon. The Board was represented by Michael S. Johnson, Assistant Attorney General.

Testifying on behalf of Petitioner, Berry Petroleum Company, LLC, a wholly owned subsidiary of LINN Energy, LLC, as successor in interest to Berry Petroleum Company (“Petitioner”), was Terry L. Laudick, Senior Staff Landman, Carole Edwards, Senior Reservoir Engineer, and Julie Pyle, Staff Geologist. A. John Davis of Holland & Hart, LLP appeared as counsel for Petitioner.

Attending on behalf of the Division of Oil, Gas and Mining (the “Division”) was Brad Hill, Oil and Gas Permitting Manager, and Dustin Doucet, Petroleum Engineer.

The Division was represented by Douglas Crapo, Assistant Attorney General.

On May 27, 2014, Berry filed a Motion to File Amended Exhibits, and on July 3, 2014 filed a Motion for Leave to File Post-Hearing Memorandum. These motions are granted.

Berry filed a May 27, 2014 Motion to Strike Division of Oil, Gas and Mining's Hearing Memorandum, and on June 23, 2004 filed a Motion to Strike Division's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Order. These motions are denied.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause shown, hereby enters the following interim findings of fact, conclusions of law, and order:

### **FINDINGS OF FACT**

1. Petitioner is a limited liability corporation with its principal place of business in Denver, Colorado.
2. Petitioner originally filed its Request for Agency Action on December 10, 2013; and then filed an Amended Request for Agency Action on May 7, 2014 (collectively, the original request and amended request are referred to as the “Request”).
3. Petitioner mailed copies of both the original Request and the Amended Request on January 10, 2014, and May 7, 2014, respectively, to the last known addresses of record as shown in the Duchesne County Recorder’s Office and the Bureau of Land

Management, Salt Lake City Office (“BLM”), for all persons having a legally protected interest in this matter by certified mail, return receipt requested.

4. Notice of the filing of the original Request and of the hearing thereon was duly published in the Salt Lake Tribune and the Deseret Morning News on January 5, 2014, and the Uintah Basin Standard on January 7, 2014.

5. The Request, as amended, covers the E½ of Section 5 and all of Section 7, Township 6 South, Range 4 West, USM, Duchesne County, Utah (the “Subject Lands”).

6. The Subject Lands are within the area generally known as the Brundage Canyon Field. The oil and gas in the Subject Lands are owned by the United States of America, and the mineral interest underlying the Subject Lands has been leased under United States Oil and Gas Lease UTU-8894A.

7. The leasehold ownership in the federal lease covering the Subject Lands has been divided by depth above and below the base of the Green River Formation. Otherwise, the ownership within each of the drilling and spacing units is uniform.

8. The Subject Lands have been spaced under Docket No. 2014-004, Cause No. 272-03, establishing drilling and spacing units for each of the 40-acre quarter-quarter sections (or equivalent governmental lots) for production of oil and gas from the Green River and Wasatch Formations. The spacing order was issued effective for each drilling unit as of the date of first production for each of the wells located in the respective drilling and spacing units or, for the wells that have not yet begun producing, as of the date the spacing order was entered. Because the spacing order was made effective for certain wells as of a date prior to its issuance, the present pooling order will be effective

for those wells as of a date prior to the date of issuance of the spacing order. As noted by the Division, this gives rise to a question regarding whether this procedure violates the holding in *Cowling v. Board of Oil, Gas and Mining*, 830 P.2d 220 (Utah 1991).

9. Evidence adduced at the hearing in this matter, as well as in the spacing hearing for these same lands in Docket No. 2014-004, Cause No. 272-03, demonstrates that, given the uniform pattern of ownership within the subject lands, spacing and pooling on the requested basis will not alter the way proceeds from the Subject Wells are being distributed. In recognition of this fact, the Petitioner requested, the Division did not oppose, and the Board granted, spacing effective as of the date of first production from the various wells as more fully discussed in paragraph 8, above. Because the pre-spacing share of production of each of the affected owners is identical to their post-spacing and pooling share of production, the diminishment of an owner's rule of capture share of production that the *Cowling* Court was concerned with will not occur in this case. Both parties note this fact and agree that no harm to any owners' rule of capture share of production will result from retroactive spacing and pooling in this case. Under these facts, the Board finds that pooling on the requested basis is just and reasonable. Whether retroactive pooling is just and reasonable in a particular case is something the Board will analyze on a case-by-case basis.

10. Petitioner is the operator of the following wells located on or proposed for the Subject Lands:

	<u>Well Name</u>	<u>Status</u>	<u>Initial Prod. Date</u>
a.	Federal 1-5D-64	Producing	09/17/13

b.	Federal 2-5D-64	Producing	09/17/13
c.	Federal 7-5D-64	Producing	09/13/13
d.	Federal 8-5D-64	Producing	10/01/13
e.	Federal 9-5D-64	Permit Pending	
f.	Federal 10-5D-64	Permit Pending	
g.	Federal 15-5D-64	Permit Pending	
h.	Federal 16-5D-64	Permit Pending	
i.	Federal 6-7-64	Producing	10/20/13
j.	Federal 3-7D-64	Producing	10/27/13
k.	Federal 4-7D-64	Producing	10/20/13
l.	Federal 5-7D-64	Producing	10/20/13
m.	Federal 2-7-64	Producing	11/04/13
n.	Federal 1-7D-64	Producing	11/04/13
o.	Federal 12-7D-64	Producing	10/09/13
p.	Federal 11-7D-64	Producing	10/09/13
q.	Federal 13-7D-64	Producing	10/09/13
r.	Federal 14-7D-64	Producing	10/09/13
s.	Federal 7-7D-64	Producing	11/04/13
t.	Federal 8-7D-64	Producing	11/05/13
u.	Federal 9-7D-64	Producing	11/05/13
v.	Federal 10-7D-64	Producing	11/5/13
w.	Federal 15-7D-64	Future Well	
x.	Federal 16-7D-64	Future Well	

(the "Subject Wells").

11. Petitioner has conducted a thorough title examination of the records of Duchesne County and the BLM to determine the mineral ownership in the Subject Lands. According to this examination, Petitioner owns 100% of the working interest in the federal lease for all depths above the base of the Green River Formation and 78.125% of the working interest for all depths below the base of the Green River Formation, and Burton/Hawks, Inc. ("Burton") owns 21.875% of the working interest below the base of the Green River Formation.

12. Prior to drilling any of the captioned wells, Petitioner sent a letter via certified mail to Burton's last address of record on July 8, 2013, containing authorizations

for expenditure (AFE) and giving it the opportunity to participate on a well-by-well basis in each of the Subject Wells except for the six wells that had not yet been proposed and have not yet been drilled (the "New Wells"), as listed in Paragraph 10 above. The letter to Burton was returned as undeliverable. Because it did not have a valid address for Burton, Petitioner did not send a letter for the six wells that have not yet been drilled.

13. Petitioner has exercised due diligence and acted in good faith in conducting an extensive search to locate Burton or its successor in interest. In attempting to locate the successor in interest to Burton (which continues to be the working interest owner of record Duchesne County and the BLM) Petitioner reviewed the corporate records for each state where Burton, or any of its potential successors, were allegedly incorporated or qualified to do business, namely Utah, Colorado, Wyoming, Nevada, and Delaware, as well as various state corporate succession lists available online. Petitioner also spoke with the former bankruptcy trustee of a successor to some, but not all, of Burton's interests and reviewed the pleadings for a closed liquidation bankruptcy proceeding pertaining to that potential successor to Burton's interests. Petitioner's efforts revealed that the succession of Burton's interest is complicated and contradictory and that the successor to this interest, if any, is uncertain.<sup>1</sup> Accordingly, Petitioner has deemed Burton to be unlocatable.

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<sup>1</sup> As noted by Petitioner, no assignment or transfer of an interest in a federal oil and gas lease can become effective until approved by the BLM. *See* 43 C.F.R. § 3106.1. The evidence adduced at the hearing demonstrates that no such approval has occurred, and Burton itself therefore remains the owner of record of the working interest at issue.

14. The Division raised concerns about the extent of the search that was conducted in order to locate, and provide notice to, Burton or its successor, questioning whether the efforts made meet the requirements of due process. Given the unusual facts of this case and the challenging and ultimately unsuccessful efforts made to locate Burton, the Board finds the Division's concerns have merit. The disagreement between the parties regarding how far Petitioner must go in its efforts to locate Burton in order to meet the requirements of due process presents a line-drawing problem. Both parties cite *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, 299 P.3d 990, in which the Utah Supreme Court recognized that "due process is a flexible, practical doctrine, the requirements of which vary with the facts of each case." *Id.* at ¶82. Of particular significance to this matter, the *Restoration Network* Court recognized that actions taken to provide notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Id.* at ¶83 (quoting *Jackson Construction Co. v. Marrs*, 2004 UT 89, ¶¶ 11, 14, 100 P.3d 1211). Although this case presents a close call, with the exception of the publication requirement discussed below, the Board finds that under the facts presented, Petitioner took all available steps that were reasonably calculated under the circumstances to provide notice to Burton of the opportunity to participate in the subject wells and of the pendency of this action.<sup>2</sup>

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<sup>2</sup> Given that prior notices sent to Burton's last known address were returned as undeliverable, for example, the Board agrees with Petitioner that sending written notice regarding the six New Wells to that same address would be futile and would not have

15. A common step taken by operators in past pooling matters before this Board involving unlocatable owners has been to request that the Board authorize notice by publication. Through testimony at the hearing Berry addressed this issue, and indicated that uncertainty about where to provide publication notice (in which locations and in which newspapers) factored into its decision not to pursue that method. Although the explanation given has some merit, the Board, particularly given that no attempt to provide notice has been made with respect to the six New Wells, favors providing such publication notice in this case. While publication notice is concededly a last-resort method that may not be likely to provide actual notice to unlocatable owners, that method is well recognized as an additional and meaningful step toward satisfying notice requirements and has been commonly employed by the Board in force pooling matters. For this reason, consistent with past practice, the Board orders that notice by publication be given as set forth in the Order section below.

16. Given that Burton was sent written notice to their record address of the opportunity to participate in the Subject Wells that were drilled in 2013, following completion of the publication notice discussed below, and assuming publication notice

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been reasonably calculated to provide notice to Burton. The parties in their post-hearing briefs discussed certain other potential actions Petitioner might have taken to attempt to locate or provide notice to Burton or a potential successor. For reasons argued in Petitioner's briefs and at the hearing, although the Board would ideally prefer to see some of those actions taken in an effort to err on the side of maximizing the chances of locating Burton, the Board agrees that such efforts would not have been reasonably calculated to provide notice to Burton and are beyond what is required under the circumstances of this case.

does not result in Burton being located, Burton will be unlocatable, and will not have consented in advance to the drilling and operation of the Subject Wells or agreed to bear its proportionate share of the costs. Consequently, if the required publication notice does not result in Burton being located, Burton will be a statutory non-consenting owner, as defined by Utah Code Ann. § 40-6-2(11) and prior precedent of the Board.

17. If the required publication notice does not result in Burton being located, Burton will be deemed an unlocatable and non-consenting working interest owner, and Petitioner has and will continue to carry (pay for) Burton's interest in the Subject Wells.

18. The costs of drilling the wells, and Burton's proportionate share of these costs, is listed as follows:

<u>Well Name</u>	<u>Cost</u>	<u>Burton's Share</u>
FED 1-5D-64	\$1,251,440	\$79,388.00
FED 2-5D-64	\$1,249,428	\$79,261.00
FED 7-5D-64	\$1,249,378	\$79,257.00
FED 8-5D-64	\$1,251,573	\$79,397.00
FED 1-7D-64	\$1,252,117	\$79,431.00
FED 2-7-64	\$1,248,421	\$79,197.00
FED 3-7D-64	\$1,252,414	\$79,450.00
FED 4-7D-64	\$1,253,503	\$79,519.00
FED 5-7D-64	\$1,249,510	\$79,266.00
FED 6-7D-64	\$1,248,124	\$79,178.00
FED 7-7D-64	\$1,248,553	\$79,205.00
FED 8-7D-64	\$1,252,447	\$79,452.00
FED 9-7D-64	\$1,252,612	\$79,463.00
FED 10-7D-64	\$1,248,949	\$79,230.00
FED 11-7D-64	\$1,252,925	\$79,482.00

FED 12-7D-64	\$1,249,345	\$79,255.00
FED 13-7D-64	\$1,248,438	\$79,198.00
FED 14-7D-64	\$1,251,935	\$79,420.00
FED 9-5D-64	\$1,250,617	\$79,336.00
FED 10-5D-64	\$1,250,617	\$79,336.00
FED 15-5D-64	\$1,250,617	\$79,336.00
FED 16-5D-64	\$1,250,617	\$79,336.00
FED 15-7D-64	\$1,250,617	\$79,336.00
FED 16-7D-64	\$1,250,617	\$79,336.00

(the “Subject Wells”).

19. As shown on Exhibit H in this matter, Burton’s share of the costs in the Subject Wells was calculated by taking the average production from 65 wells producing from both the Green River and Wasatch Formations and subtracting the average production from 54 wells producing only from the Green River Formation. The result of this analysis (the Wasatch Allocation Factor) showed that approximately 29% of the production from a well producing from both the Green River and Wasatch Formations comes from the Wasatch Formation. Thus, Burton’s 21.875% working interest in the Wasatch Formation was multiplied by the 29% Wasatch Allocation Factor resulting in Burton owning 6.34375% of the total working interest in each of the Subject Wells.

20. The estimated cost to plug and abandon the Subject Wells listed above is \$35,050.00 per well.

21. The AAPL Form 610-1989 Model Form Operating Agreement (“JOA”), previously filed with the Board as Exhibit “G”, contains provisions appropriate to govern the relationship between the operator, Petitioner, and the non-consenting owner, Burton.

22. The Subject Wells are located on the southernmost edge of the Brundage Canyon Field in an area where the Green River and Wasatch Formations become increasingly shallow, heightening the risk of drilling a dry hole or marginally productive well.

23. Force pooling the non-consenting owner's interest pursuant to Utah Code Ann. § 40-6-6.5 in the Subject Lands will promote the public interest, maximize ultimate recovery of hydrocarbon substances, prevent waste, and protect the correlative rights of all owners.

### **CONCLUSIONS OF LAW**

24. Due and regular notice of the time, place, and purpose of the hearing was properly given in the form and manner as required by law and the rules and regulations of the Board and Division to all of the working interest owners within the subject lands and all appropriate government agencies.

25. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. §§ 40-6-6 and 40-6-6.5.

26. Petitioner properly served all owners and interested parties by mailing copies of the request to such owners by certified mail, return receipt requested, pursuant to R641-106-200 of the Utah Administrative Code.

27. Petitioner acted in good faith, exercised due diligence in its search to locate Burton or the successor to its interest in the Subject Lands, and, upon completion of the publication notice requirement set forth below, will have provided Burton with adequate written notice of its opportunity to participate through such publication notice and the

July 8, 2013 Letter to Burton. As to the six wells that had not yet been proposed when the July 8, 2013 Letter was sent, Petitioner was under no obligation to send a letter to an undeliverable address. Burton's status as an unlocatable corporation with an undeliverable address prevented actual written notice by mail.

28. Upon completion of the publication notice requirement set forth below, Petitioner will have made a good faith effort to reach an agreement with Burton, or its successor in interest, to participate in each of the Subject Wells, as required by Utah Admin. Code R649-2-9.

29. If the required publication notice does not result in Burton being located, Burton will be deemed to be a non-consenting owner as defined in Utah Code Ann. § 40-6-2(11).

30. As discussed in paragraph 9, above, retroactive pooling under these circumstances is just and reasonable. This pooling order should be made effective as of the date of the spacing order (i.e., for each drilling unit as of the date of first production for each of the wells located in the respective drilling units, or for the wells that have not yet began producing, the date the spacing order is issued).

31. Based on the risk of drilling and completing the Subject Wells, a 300% risk allocation or "nonconsent" penalty is appropriate.

32. An interest rate of prime plus 2% as set at Zions National Bank is just and reasonable in this matter.

33. The Division raises an issue regarding how the nonconsent penalty should be applied under the circumstances of this case. The Division agrees with the Petitioner

that force-pooling the parties interests to the date of first production in terms of revenue sharing would not result in any redistribution of proceeds or any injury for the reasons addressed in paragraph 9, above. Division's Response to Petitioner's Proposed Finding of Fact and Conclusions of Law, and Order at 5. The Division raises an issue, however, regarding whether the 300% nonconsent penalty should be applied to the full costs of drilling and completing the well, or only that portion of such costs that remained outstanding as of the date the spacing order for these lands was entered by the Board. *Id.* at 6-7. The Division raises this issue out of concern for potential conflicts with *Cowling*.

34. The Division argues that common law principles would dictate the "sharing of costs [for a well] on a one-to-one basis" between undivided interest owners, and that prior to spacing, *Cowling* indicates "the traditional property law determines one's property rights." *Id.* at 7. For this reason, the Division raises the question of whether the nonconsent penalty (which replaces the referenced one-to-one basis for cost sharing with the statutory 300% penalty) should only apply prospectively from the date the spacing order is entered.

35. The Board does not read *Cowling* so broadly as to indicate that the entire body of common law as it relates to real property or oil and gas conservation governs prior to the entry of a spacing order. The general rule is that the common law is abrogated, and a statute becomes effective, as of the date of its enactment. In the case of our conservation statute and the nonconsent penalty issues it addresses, the common law was therefore abrogated many years ago. The *Cowling* Court did not hold that the Act does not govern prior to the entry of a spacing order. Rather, *Cowling* recognized that

while the Act does control, the *Act itself* contemplates that certain limited facets of the common law, elements of the “common law of capture,” persist until a spacing order is entered. *Cowling*, 830 P.2d at 224. Throughout the discussion in *Cowling*, it is certain features of the law of capture that are recognized as the residual elements of the common law that apply pre-spacing. *Id.* at 223-228.

36. The law of capture dictates who shares in the production of a well until a spacing order is entered (i.e., the owners of the tract upon which it is drilled). In so doing it also dictates the relative share or percentage of that production that is attributed to those owners. Only when a spacing order is entered does this share of production potentially change due to a greater number of tracts and owners being included within the geographic area covered by a drilling unit. *See Cowling*, 830 P.2d at 226. It is this change in available information as a result of spacing that is necessary to the establishment of pooling terms concerning each owner’s relative share in production from a well. *Id.* This was the circumstance presented in *Cowling* and was the basis for *Cowling’s* observation that in general the “Act does not contemplate” pooling retroactive to a date prior to entry of a spacing order. *Id.* at 227.

37. But the information supplied by a spacing order is not necessary to the calculation of what level of risk compensation penalty should be appropriately applied to a nonconsenting owner’s share of production and costs (whether that share is a rule of capture share prior to spacing or some diminished share after spacing). Regardless of whether the nonconsenting owner’s share of costs is paid on the one-to-one ratio basis referenced by the Division, or is instead multiplied by a risk compensation penalty

pursuant to the statute (such as 300%), as long as the nonconsenting owner receives its full pre-spacing rule of capture share of production with which to pay those costs, that owner's rights under the rule of capture are not affected. Because the risk allocation penalty is based on information concerning risk that is known prior to a spacing order being entered, in the Board's view, under the reasoning of *Cowling*, the common law principles that might once have dictated a one-to-one sharing of costs were displaced by the Act upon its passage, and the Act does not contemplate that they control prior to a spacing order being entered.

38. The language of the Act itself reinforces that nonconsent penalties can be applied to the full amount of drilling and completion costs (rather than the amount outstanding as of the date of a spacing order). As noted by Petitioner, the provision pertaining to nonconsent penalties specifies that the penalty applies to "that interest which would have been chargeable to the nonconsenting owner had the nonconsenting owner initially agreed to pay the nonconsenting owner's share of *the costs of the well from commencement of the operation.*" Utah Code Ann. § 40-6-6.5(4)(d)(ii) (emphasis added).

39. For the reasons set forth above, in a case like the present one where retroactive pooling is permitted because it will not affect the pre-spacing rule of capture share of production attributed to affected owners, the Board sees no reason why any nonconsent penalty imposed should not apply to the entire cost of drilling and completing the well. The Board finds that applying the penalty to the entire costs of drilling and

completing the well is consistent with the intent of the statute as discussed in paragraph 38, and under the circumstances is just and reasonable. Utah Code Ann. § 40-6-6.5(2)(b).

40. The Request and the evidence presented at the hearing in this matter establishes that, assuming the publication notice requirement set forth below is complied with, force pooling of the non-consenting owner's interests is just and reasonable, promotes the public interest, will maximize ultimate recovery of hydrocarbon substances, will prevent waste of the hydrocarbon resource, and protects the correlative rights of all owners.

41. With the sole remaining requirement of giving notice by publication as set forth below, Petitioner has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

### **ORDER**

Based upon the Request, testimony, and other evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

A. Berry shall publish notice directed to Burton apprising Burton of its right to participate in and pay its share of the costs of drilling and completing the Subject Wells, as well as of the 300% nonconsent penalty to be imposed in the event Burton is deemed nonconsent. Notice shall be published in newspapers of general circulation for both the county in which the Subject Wells are located (Duchesne County, Utah), as well as for Casper, Wyoming, the last known address for Burton. Notice shall be published once a week for two consecutive weeks and shall provide contact information (including a mailing address and telephone number) regarding how Burton or its representative may

respond to the notice. The notice shall provide a deadline for response that is twenty days later than the first date of publication. Following this publication schedule, Berry shall submit to the Board an affidavit or other evidence disclosing whether any response was received and requesting that the Board enter a final order in this matter. All other terms of this Order are conditional upon the completion of the steps outlined in this paragraph and entry of a final Order.

B. The Request, seeking an order force pooling Burton's interest in the Subject Lands, is granted.

C. This order is effective as of the date of the spacing order (i.e., for each drilling unit as of the date of first production for each of the wells located in the respective drilling units or, for the wells that have not yet begun producing, the date the spacing order is issued).

D. Each owner shall pay their allocated share of the costs incurred in drilling and operating the Subject Wells. Those costs include, but are not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities, reasonable charge for administration and supervision of operations and other costs customarily incurred in the industry.

E. Burton's interest in the Subject Wells shall be deemed relinquished to Petitioner, as the sole consenting owner, during the period of payout for the Subject Wells.

F. Burton shall be entitled to receive the share of production of the Subject Wells applicable to its interest in the drilling unit after Petitioner has recovered the following from Burton's share of production:

i. 100% of Burton's share of the cost of surface equipment beyond the well head connections including stock tanks, separators, treaters, pumping equipment, and piping;

ii. 100% of the Burton's share of the estimated cost to plug and abandon the Subject Wells, as determined by the Board;

iii. 100% of Burton's share of operation of the Subject Wells commencing with the first production and continuing until Petitioner has recovered all costs; and

iv. 300% of Burton's share of the costs of the Subject Wells for staking the location, well site preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing and completing, and the costs of equipment in the well to and including the wellhead connection, as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D).

G. The interest rate as permitted by Utah Code Ann. § 40-6-6.5(4)(d)(iii) is set to prime plus 2% as set at Zions National Bank.

H. When Petitioner has recovered, from production, Burton's share of the costs of locating, drilling, completing and other costs as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D) together with the non-consent penalty, Burton's relinquished interest

shall automatically revert back to it, and Burton shall, from that time forward, own the same interest in the Subject Wells and in the production from them, and shall be liable for further costs of operation, as if it had participated in the initial drilling and completion operations. Costs of operations after payout attributable to Burton shall be paid out of production.

I. Under any circumstance where Burton has relinquished its share of production to Petitioner or at any time fails to take its share of production in kind when it is entitled to do so, Burton is entitled to an accounting of the oil and gas proceeds applicable to its relinquished share of production; and payment of the oil and gas proceeds applicable to that share of production not taken in kind, net of cost.

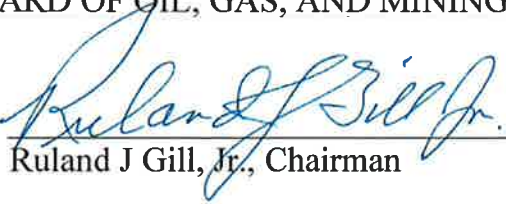
J. The terms and conditions of the JOA, Exhibit G, shall control the relationship of the parties as to all matters not expressly identified in and to the extent not inconsistent with this order. In the event that there is a conflict between the terms of the JOA and this order or Utah Code Ann. § 40-6-6.5, this order or the statute, as applicable, shall control.

K. The Board retains exclusive and continuing jurisdiction of all matters covered by this order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

L. The Chairman's signature on a facsimile copy of this order shall be deemed the equivalent of a signed original for all purposes.

DATED this 11th day of September, 2014.

STATE OF UTAH  
BOARD OF OIL, GAS, AND MINING

By:   
Ruland J Gill, Jr., Chairman

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of September, 2014, I caused a true and correct copy of the foregoing **INTERIM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** for Docket No. 2014-012, Cause No. 272-04 to be mailed via E-Mail, and First Class Mail, with postage prepaid, to the following:

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**[Via Email]**

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Utah State Office  
440 West 200 South, Suite 500  
Salt lake City, Utah 84101

United States of America  
% Ashley National Forest  
Supervisor's Office  
355 North Vernal Ave.  
Vernal, UT 84078

The estate of Mary Alice Pendleton  
Poindexter  
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Shreveport, LA 71107  
**[Undeliverable]**

Terry L. Laudick, Senior Landman  
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Bureau of Land Management  
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Burlington Resources Oil & Gas  
Company, LP  
P.O. Box 51810  
Midland, TX 79710

Donna A. Gillespie  
11816 W. 65th Cir.  
Arvada, CO 80004  
**[Undeliverable]**

HEP Partners LP  
500 W Illinois #100  
Midland, TX 79701  
**[Undeliverable]**

Burton/Hawks Inc.  
P.O. Box 359  
Casper, WY 82602  
**[Undeliverable]**

Enterprise Gas Company  
2727 N. Loop West  
Houston, TX 77210

T. Keith Marks  
475 Capitol Life Center  
Denver, CO 80203  
**[Undeliverable]**

Talisman Oil & Gas Co.  
5757 Alpha Rd., Suite 920  
Dallas, TX 75240  
**[Undeliverable]**

W.A. Gillespie  
10708 Zuni Drive  
Westminster, CO 80234-3161  
**[Undeliverable]**

Eagle Ridge Oil & Gas, Inc.  
8517 S. 77th E. Place  
Tulsa, OK 74133  
**[Undeliverable]**

Allen Revocable Trust, created under  
Agreement dated May 4, 2006  
1513 Aylesbury Lane  
Plano, TX 75075

CT Corp  
Registered Agent for Burton Hawks, Inc.  
50 West Broadway, 8<sup>th</sup> Floor  
Salt Lake City, UT 84101  
**[Undeliverable]**

